

IN THE MATTER OF	:	BEFORE THE
JOSEPH MAREK	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 06-020C

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DECISION AND ORDER

On July 10, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Joseph Marek, Petitioner, for a conditional use for a structure used primarily for religious activities in an R-12 (Residential - Single) Zoning District, filed pursuant to Section 131.N.38 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Joseph Marek testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioner is the owner of the subject property, known as 6408 Waterloo Road, which is located in the 6th Election District on the west side of Waterloo Road about 350 feet

north of Old Waterloo Road in Columbia (the “Property”). The Property is referenced on Tax Map 37, Grid 14 as Parcel 257, Lot 1.

2. The Property is an irregular-shaped parcel consisting of about 0.51 acres. The Property has approximately 111 feet of frontage on Waterloo Road and is about 190 feet deep. The Property slopes down gradually from east to west. At the front lot line, the right-of-way slopes down steeply to the road pavement.

The Property is improved with a one-story brick dwelling located in the center of the site about 75 feet from the front lot line and 37 feet from the north side lot line. The house, which was built in 1970, is 1,424 square feet in area. A wood deck is attached to the rear of the dwelling. The structure covers 6.4% of the Property. A built-in pool is located to the southwest of the home.

The house is accessed from Waterloo Road via a gravel driveway that begins near the northeast corner of the site and runs to the north side of the house where a gravel parking area provides parking for four or five vehicles. This driveway is within a 25-foot use in common easement for ingress and egress to Lots 1 and 2 (Lot 2 is situated behind Lot 1 to the west).

Aside from the dwelling, pool, and driveway, the Property consists of predominantly open lawn with scattered shade and flowering trees. Several large evergreen trees are located along the southern edge of the driveway.

3. Vicinal properties immediately adjacent to the Property are zoned R-12 and improved with single-family detached dwellings. Across Waterloo Road are a wooded buffer and an R-SC zoned subdivision of single-family detached homes.

4. The Petitioner proposes to use the existing dwelling on the Property as a religious facility for the Gladsheim Kindred. The church would operate within the existing dwelling, in which the Petitioner will reside. The building will provide a 600 square foot sanctuary area with no fixed seating. The Petitioner proposes to install a 50' by 63' gravel parking lot in front of the existing dwelling, about 15 feet from the front lot line at its southeast corner and 30 feet from the front lot line at its northeast corner. The proposed lot will provide 15 parking spaces.

5. The building will be used for worship services held on the second Saturday of each month from 6:00 p.m. to 7:00 p.m. and on holidays. Services are preceded by a study group from 4:00 p.m. to 6:00 p.m. and followed by a dinner from 7:00 p.m. to 10:00 p.m. Religious education classes will be held on or two times per month on weeknights between 7:00 p.m. and 10:0 p.m. In addition, community activities, such as bazaars, bake/craft sales, and picnics may be held outdoors on weekend days.

6. The 2000 General Plan designates the Property as a "New Town Residential" land use. The Property is currently served by public water and sewer facilities. Waterloo Road is a minor arterial with two travel lanes and paved shoulders within a variable width right-of-way. Visibility from the driveway onto Waterloo Road is over 400 feet in each direction.

7. Mr. Marek testified that there are currently 12 members of the local Gladsheim Kindred community, which typically does not exceed 20 members. He stated that the parking lot will be paved and moved back so that it is 20 feet from the Waterloo Road right-of-way. He also stated that he will install Type "E" landscaping along the east side of the parking lot.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B).

A. General Plan. The Howard County General Plan designates the area in which the Property is located as a “New Town Residential” land use. Church facilities are commonly found in residential areas and are presumptively considered compatible with residential land uses. The Petitioner’s proposed use is typical of small religious facilities. The intensity of the use, which will involve about 12-20 parishioners once a month and occasional meetings on weeknights, is low given the ½-acre site. The Property is located on a minor arterial in a residential community, which will not likely be overly affected by the use. Accordingly, the nature and intensity of operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

B. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires me to determine whether the proposed use at the Property will have adverse effects on vicinal properties above and beyond those ordinarily associated with such use. Virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed religious facility has adverse effects in the R-12 zone. The proper question is whether those adverse effects are greater at the proposed site than they would be generally elsewhere within the R-12 district.

For the reasons stated below, I find that the Petitioner has met its burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal

properties above and beyond those ordinarily associated with a structure used primarily for religious activities in the R-12 district:

1. Physical Conditions. The Petitioner's religious facility consists of typical religious and social activities that will take place only occasionally on weeknights and weekend days. Activities will be primarily indoors. Any noise generated by the activities will be attenuated by distance and landscaping and will not be greater than that ordinarily associated with a church use. No parking lot lighting is proposed. The use will therefore not generate excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with a religious facility in the RR-DEO zoning district, as required by Section 131.B.2.a.

2. Structures and Landscaping. No new structures are proposed. The size and height of the existing facility is typical of surrounding residential uses. The church building is centrally located and well separated from vicinal properties. Consequently, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. Parking and Drives. The required minimum parking spaces for a religious facility is ten parking spaces for every 1,000 square feet in the main assembly area. The petition provides for an assembly area of 600 square feet, which will require 6 parking spaces. The Petitioner proposes a 63' by 50' paved parking lot. While this lot will have to be reduced somewhat in size in order to meet the 20-foot setback required by Section 109.D.4.a(2), it is evident that the lot will be more than adequate for the use.

The Petitioner plans to provide a Type “E” landscape buffer along the east side of the parking lot to screen it from Waterloo Road. No dumpster is proposed. Consequently, if the parking lot is reduced so as to be situated at least 20 feet from the front lot line and appropriate Type “E” screening is provided along the eastern side of the parking lot, the parking area and driveway will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

4. Safe Access. Given the infrequency and low intensity of the use, the existing access drive will provide safe access. Sight distance is adequate. Acceleration and deceleration lanes are unnecessary. Consequently, the proposed driveway will provide adequate ingress and egress to the Property so as to achieve maximum safety, as required by Section 131.B.2.d.

II. Specific Criteria for Structures Used Primarily for Religious Activities (Section 131.N.38).

1. The lot coverage is about 6.4%, which does not exceed the 25% maximum lot coverage allowed by Section 131.N.38.a.

2. The church building does not exceed the maximum height allowed in the R-12 district; consequently, Section 131.N.38.b does not apply.

ORDER

Based upon the foregoing, it is this **21st day of August 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Joseph Marek for a conditional use for a structure used primarily for religious activities in an R-12 (Residential - Single) Zoning District is hereby **GRANTED;**

Provided, however, that the conditional use will apply only to the uses and structures as described in the petition and conditional use plan submitted, as amended herein, and not to any other activities, uses, structures, or additions on the Property, and **subject to the following conditions:**

1. The Petitioner will pave the parking area; and
2. The Petitioner will relocate the parking area so that it is at least 20 feet from the Waterloo Road right-of-way; and
3. The Petitioner must install a Type "E" or equivalent landscape buffer between the parking area and the eastern (front) lot line.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.